

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	2145.04
COMPLAINT INVESTIGATOR:	Becky Bowman
DATE OF COMPLAINT:	June 3, 2004
DATE OF REPORT:	June 30, 2004
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	October 29, 2004

COMPLAINT ISSUES:

Whether Shelby Eastern School Corporation and the Blue River Special Education Cooperative violated:

511 IAC 7-27-4(a)(5) by failing to convene the student's case conference committee (CCC) meeting when student A and student B moved in to the school corporation from another Indiana school corporation where the students had been receiving special education services.

511 IAC 7-25-3(k) by failing to evaluate student A and student B before determining the students were no longer eligible for special education services.

511 IAC 7-22-2(a) by failing to provide the parents with prior written notice when the school proposed to change student A and student B's identification, special education placement, or provision of a free appropriate public education.

511 IAC 7-17-36 and 511 IAC 7-18-2(a) by failing to provide student A and student B, students with disabilities between the ages of three and 22, with a free appropriate public education.

FINDINGS OF FACT:

1. Students A and B are sixteen years old and nineteen years old respectively and are both eligible for special education and related services.
2. During the 2002-2003 school year, both Students attended North Decatur Jr.-Sr. High School in the Decatur County Community School district, although their legal settlement was in the Shelby Eastern School Corporation. On August 13, 2002, both Students formally requested approval to transfer from Shelby Eastern, at Shelby Eastern's expense, to North Decatur Jr.-Sr. High School. On August 16, 2002, the Superintendent of Shelby Eastern denied both Students' requests. The parents of the Students requested a hearing on Shelby Eastern's denial (Hearing #1327.03). The hearing was eventually dismissed in March 2003 due to the parents' lack of participation in the hearing process.
3. On February 3, 2003, in preparation for Hearing #1327.03, the Blue River Special Education Cooperative, of which Shelby Eastern is a member, requested and obtained the current IEPs for Student A and Student B from the Bartholomew Special Services Cooperative of which Decatur County Community Schools is a member.
4. Both Students enrolled in Waldron Jr.-Sr. High School within the Shelby Eastern School Corporation on August 13, 2003. The *New Student Registration* form for each Student is signed by the parent and

indicates that neither student has an IEP. The guidance counselor at Waldron requested the Students' records from North Decatur, but reports that the information received did not identify either Student as eligible for special education and related services.

5. The Blue River special education director ("Special Education Director") reports that, subsequent to the Students experiencing some difficulties in school in the early part of the school year, the guidance counselor sought additional records from North Decatur. On November 3, 2003, Waldron received the Students' IEPs that had been in effect at the end of the 2002-2003 school year at North Decatur.
6. Shortly after receipt of the IEPs, the guidance counselor conducted a meeting with the parents and Student B. No other school staff attended the meeting. The Special Education Director reports that, during this meeting, the parent and Student B declined continued special education and related services; however, no documentation of the meeting or the parent's decision was provided. No evaluation was conducted to determine Student B's continued eligibility for special education. No special education and related services were provided to Student B during the 2003-2004 school year, and the school provided no written notice of this to the parent or Student B.
7. The Special Education Director also reports that the guidance counselor met with the parent regarding special education services for Student A and that the parent declined continued special education related services for Student A. No other school staff attended the meeting at which this decision was made, and no documentation of the meeting or the parent's decision was provided. No evaluation was conducted to determine the Student's continued eligibility for special education and related services. No special education and related services were provided to Student A, and the school provided no written notice of this to Student A's parent.
8. The *Period Attendance Report* indicates that Student A was not enrolled in Waldron subsequent to December 19, and the Special Education Director reports that Student A withdrew, advising the school that she would be re-enrolling in North Decatur. Student A enrolled in North Decatur, but withdrew approximately one month later. Student A has not attended school since that time. No CCC was convened regarding Student A's change of placement based on the Student's withdrawal from Waldron and anticipated re-enrollment in North Decatur.

CONCLUSIONS:

1. Findings of Fact #2 through #7 demonstrate that both Students had an IEP in effect during the 2002-2003 school year while attending school in another Indiana school corporation, and that upon enrolling in Waldron, no CCC was convened within ten instructional days of the Students' enrollment. Although the school corporation and cooperative report that the records obtained shortly after the Students' enrollment failed to identify the Students as receiving special education, both the Shelby Eastern and Blue River had information of the Students' special education status six months prior to the Students' actual enrollment. Further, even when Waldron obtained the Students' previous IEPs in November 2003, no CCC was convened. Therefore, a violation of 511 IAC 7-27-4(a)(5) is found with respect to Student A and Student B.
2. Findings of Fact #6 and #7 reflect that, despite the Students' eligibility for special education and related services, the school did not provide any of these services to Students A and B during the 2003-2004 school year. The school relied solely on the parents' request to discontinue services, and did not convene a CCC meeting or conduct any evaluations to determine either Student's continued eligibility. Although the school could have agreed that the Students were no longer eligible or in need of special education services, it could not do so in the absence of an evaluation to support the lack of eligibility. Further, such decisions must be made within the context of a CCC

meeting. If the school believed that the Students continued to be eligible and in need of special education services, the school is required to resolve the issue through mediation or a due process hearing. The school took none of the requisite actions. Therefore, a violation of 511 IAC 7-25-3(k) is found with respect to Student A and Student B.

3. Findings of Fact #6 and #7 indicate that neither the school nor the cooperative provided the parents with prior written notice when changing the Students' placement and services for the 2003-2004 school year from those that were identified in the Students' last agreed upon IEPs. Therefore, a violation of 511 IAC 7-22-2(a) is found with respect to Student A and Student B.
4. Findings of Fact #1 through #8 demonstrate that, although the school and the cooperative knew the Students were eligible for and had been receiving special education and related services, they failed to convene any CCC meetings; failed to evaluate either Student for continued eligibility before terminating services; and failed to develop, review or revise any IEPs or provide any special education and related services. Therefore, they failed to provide Student A and Student B with a free appropriate public education, and violations of 511 IAC 7-17-36 and 511 IAC 7-18-2(a) are found with respect to both Students.

The Department of Education, Division of Exceptional Learners, requires corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Shelby Eastern School Corporation and the Blue River Special Education Cooperative shall:

1. Convene a CCC meeting for Student B prior to the first day of school to develop an IEP for the 2004-2005 school year. If the CCC believes the Student may no longer be eligible as a student with a disability, the school shall conduct the evaluations necessary for the CCC to determine continued eligibility and reconvene the CCC no later than September 17, 2004. If the CCC determines the Student continues to be eligible for special education services, the CCC shall determine the compensatory services to be provided to the Student as a result of the school's failure to provide a free appropriate public education during the 2003-2004 school year. The CCC's consideration of the Student's continued eligibility and compensatory services shall be documented in detail in the CCC Report/IEP. A copy of the CCC Report/IEP shall be submitted to the Division no later than September 30, 2004.
2. Conduct a meeting with the parents and Student A, prior to the first day of school, regarding Student A's plans regarding enrollment in school for the 2004-2005 school year. As Student A is less than 18 years of age, I.C. §20-8.1-3-17 requires the Student be enrolled in a public or private school and be subject to the requirements of compulsory attendance unless the Student's withdrawal from school is pursuant to I.C. §20-8.1-3-17(j).
 - a. If Student A withdraws from school with the intention of not enrolling in another public or private school, the school shall submit documentation of the withdrawal and the school's compliance with the requirements of I.C. §20-8.1-3-17(j). This documentation shall be submitted to the Division no later than September 10, 2004.
 - b. If Student A withdraws from school with the intention of enrolling in another public or private school, the school shall appropriately document the withdrawal and shall follow up with the school in which Student A intends to enroll to ensure that the Student has enrolled and that Student A's records, including information about special education and related services, are

transmitted to the new school in a timely manner. The school shall submit documentation of Student A's withdrawal from the school and enrollment in another school, as well as documentation that all of the Student's educational records were transmitted to the new school. This documentation shall be submitted to the Division no later than September 10, 2004.

- c. If Student A enrolls in school, the school and the cooperative shall convene a CCC meeting within 5 school days of enrollment and develop an IEP for the 2004-2005 school year. If the CCC believes the Student may no longer be eligible as a student with a disability, the school shall conduct the evaluations necessary for the CCC to determine continued eligibility and reconvene the CCC no later than September 17, 2004. If the CCC determines the Student continues to be eligible for special education services, the CCC shall determine the compensatory services to be provided to the Student as a result of the school's failure to provide a free appropriate public education during the 2003-2004 school year. The CCC's consideration of the Student's continued eligibility and compensatory services shall be documented in detail in the CCC Report/IEP. A copy of the CCC Report/IEP shall be submitted to the Division no later than September 30, 2004.

3. Provide inservice training to appropriate personnel on the following requirements:
 - a. Convening a CCC within ten instructional days of a student's enrollment when the student has been receiving special education and related services in another state or another school district within Indiana;
 - b. The requisite members of a CCC meeting;
 - c. Conducting an evaluation of a student before determining the student is no longer eligible for special education services, and the CCC's role in reviewing the evaluative information and determining the student's continued eligibility;
 - d. Providing a free appropriate public education, including the school's role and responsibilities when the parent wants the school to discontinue services to a student whom the school believes continues to be eligible for and entitled to a free appropriate public education as a student with a disability.

Documentation of the inservice training, including date(s) conducted, individuals present by name and title, agenda for the inservice, name(s) of presenter(s), and materials provided to the participants on the topics identified above shall be submitted to the Division no later than September 30, 2004.